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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120321209-2162-01]

RIN 0648-BC08

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (MSB FMP), which was developed and adopted by the Mid-Atlantic Fishery Management Council and submitted to NMFS for approval. This action proposes broadening the scope of individuals and entities approved to complete vessel fish hold capacity certifications for vessels issued Tier 1 and 2 limited access Atlantic mackerel permits.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Framework Document, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street,

Dover, DE 19901. The Framework Document is also accessible via the Internet at <http://www.nero.noaa.gov>.

You may submit comments, identified by NOAA-NMFS-2012-0103, by any one of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0103 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail to NMFS, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope “Comments on MSB Framework Adjustment 5.”
- Fax: (978) 281-9135, Attn: Lindsey Feldman;

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted

in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978- 675-2179, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 11 to the MSB FMP (76 FR 68642, November 7, 2011) implemented a three tiered mackerel limited access program in which all qualifiers were required to have possessed a valid permit on March 21, 2007. A vessel must have landed at least 400,000 lb (181.44 mt) in any one year 1997-2005 to qualify for a Tier 1 permit; at least 100,000 lb (45.36 mt) in any one year March 1, 1994–December 31, 2005, to qualify for a Tier 2 permit; or at least 1,000 lb (0.45 mt) in any one year March 1, 1994–December 31, 2005, to qualify for a Tier 3 permit. Trip limits for each tier are established annually through the specification process. The trip limits approved for 2012 are unlimited for Tier 1; 135,000 lb (61.23 mt) for Tier 2; and 100,000 lb (45.36 mt) for Tier 3.

The tiered limited access program went into effect on March 1, 2012, and permit applications are being accepted through February 28, 2013. Vessel owners whose vessels are issued Tier 1 and 2 mackerel permits (the tiers with the highest access) are required to obtain a certification of the capacity of the vessel's fish hold(s). The final rule implementing Amendment 11 provided that a fish hold capacity certification must be made by an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors, or by an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors. Vessel owners who have received a

certification of their vessel's fish hold capacity by the Maine State Sealer of Weights and Measures also meet the fish hold capacity requirement. Vessel owners are required to submit documentation in support of their vessel's certified fish hold capacity to NMFS by December 31, 2012, or their first vessel replacement or upgrade, whichever comes first. The certified fish hold capacity will be considered a new baseline specification to control future vessel upgrades for vessels with Tier 1 and 2 mackerel permits. In addition to limiting vessel upgrades to 10 percent above the baseline gross registered tonnage, net tonnage, and length overall and 20 percent above the baseline horsepower, future upgrades to Tier 1 and 2 mackerel permits will be limited to 10 percent above the certified baseline fish hold capacity. Council staff and the Council developed the original credentialing requirements through background research, advisory panel meetings, input from several marine surveyors in the Mid-Atlantic and New England, and input during several rounds of public comment on the amendment. Since publication of the final rule for Amendment 11, two marine professionals commented that additional qualified individuals or entities should be approved to complete fish hold capacity certifications. Industry representatives suggested that individuals other than those with the credentials approved in Amendment 11 may be qualified to complete fish hold capacity certifications. To address this concern, the Council adopted Framework 5 on April 12, 2012, and submitted it to NMFS on April 18, 2012, for review and approval.

This action proposes revising the fish hold capacity certification requirement to allow additional individuals or entities beyond those with credentials approved in Amendment 11 to complete fish hold capacity certifications. This framework action would expand the range of individuals and entities that are approved to complete hold capacity certifications and allow them

also to be completed by employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c), Maine State Sealer of Weights and Measures, a professionally-licensed and/or registered Marine Engineer, or a Naval Architect with a professional engineer license. NMFS invites the public to comment on whether this expanded list is too broad or there are other individuals who should be added to this list because they have credentials reflecting their competence to make a fish hold certification of which NMFS is currently unaware. In addition, we invite public comment on whether there is a need for additional mechanisms to ensure that individuals and/or entities are qualified to perform fish hold capacity certifications. This list could be expanded in the final rule to include such individuals if NMFS determines it has a reasonable basis upon which to assess an individual's competence to make a fish hold certification. This action also proposes extending the date that vessels are required to submit fish hold capacity measurements by one year. Due to a delay in rulemaking, vessels with mackerel Tier 1 and 2 permits would be required to submit fish hold capacity measurements by December 31, 2013, instead of December 31, 2012.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief

Council for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. For the reasons described below, an initial regulatory flexibility analysis is not required for this framework action and none has been prepared.

The Small Business Administration (SBA) defines a small business in the commercial fishing sector as a firm with receipts (gross revenues) of up to \$4.0 million. Party/charter small businesses are included in NAICS code 487210 and are defined as a firm with gross receipts of up to \$7 million. Depending on the year, all 74 of the vessels required to complete hold certifications may qualify as small businesses, or a few may be above the 4.0 million dollar threshold depending on their landings in a given year. However, this action will not negatively impact any fishery participants, regardless of size.

Amendment 11 analyzed the impacts from requiring Tier 1 and 2 mackerel vessels to obtain fish hold capacity measurements from an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors, from an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors, or with certification by the Maine State Sealer of Weights and Measures. This action proposes to broaden the scope of individuals who are approved to complete the fish hold capacity measurement, but does not have any impact on small entities outside of the scope of those analyzed in Amendment 11. Although vessel owners will have more flexibility for obtaining a fish hold capacity measurement completed by a qualified individual under this action, this action is not expected to result in any change in the cost associated with obtaining the certification.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: September 17, 2012

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.4, paragraph (a)(5) (iii)(H)(1) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(5) * * *

(iii) * * *

(H) Vessel baseline specification. (1) In addition to the baseline specifications specified in paragraph (a)(1)(i)(H) of this section, the volumetric fish hold capacity of a vessel at the time it was initially issued a Tier 1 or Tier 2 limited access mackerel permit will be considered a baseline specification. The fish hold capacity measurement must be certified by one of the following qualified individuals or entities: an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors (NAMS); an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (SAMS); employees or agents of a classification society approved by the Coast Guard pursuant to 46 U.S.C. 3316(c); the Maine State Sealer of Weights and Measures; a professionally-licensed and/or registered Marine Engineer; or a Naval Architect with a professional engineer license. Owners whose vessels qualify for a Tier 1 or Tier 2 mackerel permit must submit a certified fish hold capacity measurement to NMFS by December 31, 2013, or with the first vessel replacement application after a vessel qualifies for a Tier 1 or Tier 2 mackerel permit, whichever is sooner. The fish hold capacity measurement submitted to NMFS as required in this paragraph (a)(5)(iii) must include a signed certification by the individual or entity that completed the measurement, specifying how they meet the definition of a qualified individual or entity.

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